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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,829	02/21/2006	Ganugapati Vijaya Bhaskar	DAIRY88.011APC	2247
20995 7590 11/17/2008 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER BADR, HAMID R				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
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# Office Action Summary

**Application No.**

10/540,829

**Applicant(s)**

BHASKAR ET AL.

**Examiner**

HAMID R. BADR

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date 6/24/2005
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Objection to Claims***

Claims 23-24 are objected to for "in any one of". Since both claims are referring to claim 18, the use of this phrase before a single claim is inappropriate. Correction is required.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 1-10 are indefinite for reciting in claim 1 "substantially" nugget free. It is unclear what is meant by "substantially". It is not clear what the applicants regard as the invention.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-11, 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Delespaul et al. (FR 2 452 879; Examiner's Translation; hereinafter R1).

3. R1 discloses a process for making cheese. It specifically discloses a process for preparing milk products with improved texture. In classical cheese making, a coagulation stage is used where the milk is coagulated using an acid or pressure or notably microbial enzymes. (page 1, first two paragraphs).
4. R1 discloses that a more recent technique is the cheese making process by ultrafiltration consisting of concentrating milk proteins using membranes. (page 1, lines 9-12).
5. R1 discloses that the proteinaceous concentrate is coagulated by adding enzymes (rennet) and can be acidified by chemical acidification or bacteriological acidification (bacterial lactic fermentation) and by pressure to obtain cheese. The obtained cheese can undergo classical operations of acidification and aging. (page 1, line 26- page 2 line 1).
6. R1 discloses that the process of ultrafiltration has the advantage of improving the efficiency because the milk proteins which are ordinarily lost in the whey are incorporated in the curd. (page 2, lines 2-5).
7. R1 teaches of acidifying the milk before the ultrafiltration to solubilize part of the calcium which will be eliminated during the filtration process. (page 2, lines 23-26).
8. R1 teaches of heating the milk before the ultrafiltration process or heating the retentate of the ultrafiltration process to temperatures which can reach sterilization. This thermal treatment is effectuated at 75-150C and allows obtaining cheeses having fine and homogenous texture. R1 further explains that one can attribute the favorable effect of the heat treatment to partial denaturation of proteins or modification of the

physical state of calcium present. (page 2, line 37- page 3, line7). The heat treatment should not be extensive, because due to extensive heat treatment, the viscosity of the product will be modified . (page 3, lines 9-11).

9. R1 discloses that the prepared material can be in the form of liquid or powder, or can be reconstituted and have fat, standardized by skim milk, or mixed with materials of animal or pant origin. The material can include 0-75% dry matter and preferably 40-50% (page 3, lines 31-36).

10. R1 teaches the decalcification of milk by ion exchange using cationic resins. Such resins can be charged for example by sodium, potassium, ammonium or hydrogen ion or by divalent ions such as magnesium, zinc, copper or trivalent ions depending on the salt concentration, pH and the desired composition of the material. (page 4, lines 4-12).

11. R1 discloses that the decalcification can be 0-80% and preferably 20-40% (page 4, line20-21). The decalcification extent will depend on the type of cheese desired (page 5, lines 22-26).

12. R1 discloses that the decalcification is eventually associated with a heat treatment between 75-150C and preferably 90-110C. R1 restates that the decalcification together with heat treatment will allow obtaining a fine and homogenous texture of cheese. (page 5, lines 26-31).

13. R1 discloses that when the decalcification process causes a total decalcification of milk or retentate, some soluble calcium can be added to allow the action of pressure and the coagulation which follows. (page 5, lines 32-36).

14. R1 gives examples of making cheese using calcium depleted milk and rennet.

Decalcification is carried out to 30% in Example 1 and to 100% in Example 2. In Example 3, heat treatment is carried out by injection of vapor at 120C. (pages 6-7). The cheese is subjected to further processing (examples).

15. Given that R1 discloses processes for the preparation of milk protein concentrate (MPC) or isolate (MPI) through calcium depletion, the preparation will have higher solubility than MPC and MPI without calcium depletion. The cold solubility will be inherent in the product and the solubility in cold aqueous media will be in the range as presently claimed.

16. Given that the MPC and MPI products as disclosed by R1 contain whey proteins, it is clear that the whey protein content will be in the range as presently claimed.

17. Given that the ultrafiltered material as disclosed by R1 has 70% dry matter (Example 1, 2, 3), upon drying such a product will have dry matter, as milk protein, in the range as presently claimed.

18. Given that R1 discloses method as presently claimed, it is clear that the cheese would inherently be substantially nugget free as presently claimed.

***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 7, 12-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Delespaul et al. (FR 2 452 879; Examiner's Translation; hereinafter R1) in view of Bhaskar et al. (WO 01/41578; hereinafter R2).

21. The disclosure by R1 is hereby incorporated by reference as outlined in paragraphs 3-14 above.

22. While R1 discloses the temperature range at which the heat treatment can be carried out, and it specifically points out to the point that extensive denaturation will affect the viscosity of the product, it does not mention duration of time during heat treatment. However, knowing the temperature in the range as taught by R1, those of skill in the art can optimize the time required for heat treatment as presently claimed.

23. R1 is silent using chelating agents for decalcification, or indirect means of heat treatment of the material, or a specific pH at which heat treatment is performed.

24. R2 discloses the preparation of milk protein concentrate (MPC) or isolate (MPI) having at least 70% dry matter as milk protein and using them in cheese making. The calcium depleted MPC and MPI will allow the manufacture of nugget free cheese. (Abstract).

25. R2 teaches that when the calcium removal is by way of addition of chelating agents, citric acid, EDTA. The chelating agents are used in conjunction with dialysis and or ultrafiltration and diafiltration. (page 4, lines 10-14).

26. R2 teaches that the liquid product can be dried using falling film evaporators and spray drying. (page 4, lines 31-33).

27. R2 teaches that pH of MPC or MPI when applied to cation exchanger is in the range of 5.6-7. If after passage through the ion exchange column the pH increases above 7.0, it will be adjusted to 6.5-7.0 to make it more palatable (page 5, lines 14-17).
28. R2 disclose a process for preparing a dried MPC or MPI (page 6, steps a-e).
29. It would be also obvious to perform the heat treatment using indirect heat heating as presently claimed. An example of indirect heating is a plate heat exchanger which is well known in the art.
30. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to follow the teachings of R1 and R2 to prepare high yield MPC and MPI of the presently claimed invention which results in more consistent and efficient cheese making (page 1, lines 21-23, R2). Absent any evidence to contrary and based on the combined teachings of the cited references, there would be a reasonable expectation of success in preparing calcium depleted milk concentrates.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-T 5:00 to 3:30 (Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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